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Attorneys for Plaintiff  
Lehman Brothers Holdings, Inc.

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

Lehman Brothers Holdings, Inc., a Delaware  
Corporation,

Plaintiff,

vs.

Security Mortgage Corporation, an Arizona  
Corporation

Defendant.

No.

**COMPLAINT**

Plaintiff Lehman Brothers Holdings, Inc. ("LBHI") by and through its undersigned attorneys, and for its causes of action against Defendant Security Mortgage Corporation ("Security"), states and alleges as follows:

**NATURE OF ACTION**

1. From 2004 until 2007, Lehman Brothers Bank, FSB ("LBB," and collectively with LBHI, "Lehman") purchased mortgage loans from Security pursuant to a series of written contracts. LBB subsequently assigned its rights under those contracts to LBHI. With respect to certain of these mortgage loans, Security breached representations, warranties and covenants as well as other provisions of the contracts that required it to repurchase from Lehman mortgage loans for which the borrower failed to make payments on the mortgage. By this action, LBHI seeks to: (a) compel Security, pursuant to the terms of the contracts, to repurchase mortgage loans that Lehman

1 purchased and (b) recover money damages where repurchase is not a viable option or  
2 does not offer complete relief for injuries that have been sustained. As a result of  
3 Security's contractual breaches, LBHI currently estimates its losses at \$781,002.46  
4 excluding interest, fees and costs.

### 5 **PARTIES**

6 2. LBHI is a Delaware corporation, incorporated under the laws of the State of  
7 Delaware in 1983, with its principal place of business in New York. For purposes of  
8 diversity, LBHI is thus deemed to be a citizen of Delaware and a citizen of New York.

9 3. Security is an Arizona corporation, incorporated in Arizona in 1997, with  
10 its principal place of business in Phoenix, Arizona. For purposes of diversity, Security is  
11 thus deemed to be a citizen of Arizona.

### 12 **JURISDICTION AND VENUE**

13 4. This Court has jurisdiction under 28 U.S.C. § 1332 because there is  
14 complete diversity of citizenship between Plaintiff LBHI and Defendant Security, and the  
15 amount in controversy exceeds \$75,000, exclusive of interests and costs.

16 5. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because  
17 Security resides in Phoenix, Maricopa County, Arizona.

### 18 **FACTUAL ALLEGATIONS**

19 6. Lehman engages in the purchase and sale of mortgage loans.

20 7. Security engages in mortgage lending, as well as the sale of mortgage loans  
21 in the secondary market to investors such as Lehman.

22 8. On August 5, 2004, Security entered into a written Loan Purchase  
23 Agreement with LBB (the "Agreement"). The Agreement specifically incorporated the  
24 terms and conditions of the "Seller's Guide" of Lehman's agent Aurora Loan Services  
25 LLC ("Aurora"), which sets forth additional duties and obligations of Security.

26 9. The Agreement and the Seller's Guide set forth the duties and obligations  
27 of the parties with respect to the purchase and sale of mortgage loans, including but not  
28 limited to purchase price, delivery and conveyance of the mortgage loans and mortgage

1 loan documents, examination of mortgage loan files and underwriting, representations  
2 and warranties concerning the parties and individual mortgage loans purchased or sold,  
3 and remedies for breach.

4 10. Security sold a number of mortgage loans to LBB under the Agreement and  
5 Seller's Guide, including the four loans listed on **Exhibit A**, attached hereto and  
6 incorporated by reference herein.

7 11. Subsequent to such sales, LBB assigned all of its rights and remedies under  
8 the Agreement and Seller's Guide to LBHI. The Agreement and Seller's Guide  
9 specifically provided for such assignment.

10 **Representations, Warranties and Covenants**

11 12. With respect to each of the loans that Security sold to LBB under the  
12 Agreement and Seller's Guide, Security made a number of representations, warranties  
13 and covenants including, without limitation:

14 (a) the validity of all mortgage loan documentation;

15 (b) the accuracy and integrity of all information and documentation  
16 regarding borrower identity, income, employment, credit, assets, and liabilities  
17 used in making the decision to originate the mortgage loans;

18 (c) occupancy by the borrower of the property securing the mortgage  
19 loan;

20 (d) the ownership, nature, condition, and value of the real property  
21 securing the respective mortgage loans; and

22 (e) the conformance of the mortgage loans with applicable underwriting  
23 guidelines and loan program requirements.

24 13. Security also represented and/or warranted that no error, omission,  
25 misrepresentation, negligence, fraud, or similar occurrence took place with respect to the  
26 mortgage loans by any person involved in the origination of the mortgage loans, and that  
27 no predatory or deceptive lending practices were used in the origination of the mortgage  
28 loans.

1           14. With respect to itself, Security represented and/or warranted that it had the  
2 ability to perform its obligations under and satisfy all requirements of, the Agreement and  
3 Seller's Guide.

4           15. With respect to certain mortgage loans that LBB purchased from Security,  
5 Lehman discovered material problems including that Security had breached various  
6 representations, warranties and/or covenants under the Agreement and Seller's Guide,  
7 including but not limited to those set forth in paragraphs 12 and 13 above.

8           16. More specifically, with respect to loan number 4 on **Exhibit A**, Security  
9 breached one or more of the representations, warranties and/or covenants under the  
10 Agreement and Seller's Guide.

11           17. LBHI, through its agent, provided Security with written notice concerning  
12 Security's various breaches of the representations and warranties with respect to the loan  
13 referenced in paragraph 16 above.

14           18. The Agreement and Seller's Guide provided that in the event of a breach of  
15 the representations, warranties, and/or covenants, LBHI or its agent may demand that  
16 Security repurchase the loan and/or indemnify Lehman, and Security shall repurchase the  
17 loan at a certain repurchase price and/or indemnify Lehman. LBHI, through its agent,  
18 has demanded that Security repurchase the mortgage loan referenced in paragraph 16  
19 above at the specified repurchase price.

20           19. Security has refused, and continues to refuse, to repurchase the mortgage  
21 loan, to indemnify Lehman, or otherwise comply with its obligations under the  
22 Agreement and Seller's Guide with respect to the loan referenced in paragraph 16 above.

23                           **Early Payment Defaults**

24           20. The Agreement and Seller's Guide further specified that LBHI or its agent  
25 may demand that Security repurchase and that Security shall repurchase, mortgage loans  
26 that become "Early Payment Defaults."

27           21. A loan becomes an Early Payment Default under the Agreement and  
28 Seller's Guide in one of two ways. First, for loans prior-approved by the purchaser, the

1 loan becomes an Early Payment Default if the borrower fails to make the first monthly  
2 payment due within 30 days of the payment's due date. Second, for loans purchased  
3 pursuant to the seller's delegated underwriting authority, eligible for delegated  
4 underwriting, or purchased in bulk transactions, the loan becomes an Early Payment  
5 Default if the borrower fails to make the first or second monthly payment due within 30  
6 days of each such monthly payment's respective due date. Security received delegated  
7 underwriting authority before it sold the loans in question.

8 22. Certain loans that Lehman purchased from Security became Early Payment  
9 Defaults. More specifically, with respect to the loans numbered 1 through 3 on **Exhibit**  
10 **A**, the borrower failed to make the first and/or second payment within 30 days of the due  
11 dates for those payments.

12 23. LBHI, through its agent, provided Security with written notice concerning  
13 the fact that the loans referenced in paragraph 22 above became Early Payment Defaults  
14 and demanded that Security repurchase those mortgage loans.

15 24. Security has refused, and continues to refuse, to repurchase the mortgage  
16 loans, to indemnify Lehman, or otherwise comply with its obligations under the  
17 Agreement and Seller's Guide with respect to the loans referenced in paragraph 22 above.

18 **FIRST CLAIM FOR RELIEF**

19 (Breach of Contract – Damages)

20 25. LHBI hereby repeats and realleges the above allegations of this Complaint  
21 as if fully set forth herein.

22 26. The Agreement and incorporated Seller's Guide is a valid and enforceable  
23 contract that is binding upon Security.

24 27. LBB, LBHI, Lehman's agents, and any and all assignees of Lehman's  
25 rights have substantially performed all of their obligations under the Agreement and  
26 Seller's Guide.

27 28. As set forth herein, Security has breached the Agreement and Seller's  
28 Guide by (a) breaching the representations, warranties and/or covenants, (b) refusing or

1 otherwise failing to repurchase the mortgage loans affected by the breached  
2 representations, warranties, and/or covenants, and/or refusing to indemnify Lehman, and  
3 (c) refusing or otherwise failing to repurchase the mortgage loans that have become Early  
4 Payment Defaults, and/or refusing to indemnify Lehman.

5 29. With regard to the mortgage loans that Security has failed to repurchase  
6 and/or indemnify, Security's breaches of the Agreement and Seller's Guide resulted in  
7 actual and consequential damages in an amount to be proven at trial.

8 **SECOND CLAIM FOR RELIEF**

9 (Breach of Contract – Specific Performance)

10 30. LHBI hereby repeats and realleges the above allegations of this Complaint  
11 as if fully set forth herein.

12 31. In the alternative to damages, LBHI seeks specific performance.

13 32. The Agreement and incorporated Seller's Guide constitute a valid and  
14 enforceable contract that is binding upon Security.

15 33. The contractual repurchase provisions are definite.

16 34. The Agreement and Seller's Guide are just and reasonable.

17 35. LBB, LBHI, Lehman's agents, and any and all assignees of Lehman's  
18 rights have substantially performed all of their obligations under the Agreement and  
19 Seller's Guide.

20 36. As set forth herein, Security has breached the Agreement and Seller's  
21 Guide by (a) breaching the representations, warranties, and/or covenants, (b) refusing or  
22 otherwise failing to repurchase the mortgage loans affected by the breached  
23 representations, warranties and/or covenants, and/or refusing to indemnify Lehman, and  
24 (c) refusing or otherwise failing to repurchase the mortgage loans that have become Early  
25 Payment Defaults, and/or refusing to indemnify Lehman.

26 37. Due to the unique and specific nature of mortgage loans intended for  
27 securitization and the real property securing the mortgage loans, LBHI has no adequate  
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1 remedy at law for redress of Security's breaches of the representations and/or warranties  
2 and its obligation to repurchase loans that have become Early Payment Defaults.

3 38. LBHI is therefore entitled to an Order of this Court requiring specific  
4 performance by Security of its repurchase obligations under the Agreement and Seller's  
5 Guide.

6 **THIRD CLAIM FOR RELIEF**

7 (Breach of Express Warranty)

8 39. LHBI hereby repeats and realleges the above allegations of this Complaint  
9 as if fully set forth herein.

10 40. The Agreement and the Seller's Guide constitute a valid and enforceable  
11 contract that is binding upon Security.

12 41. With regard to each of the mortgage loans sold to Lehman under the  
13 Agreement and Seller's Guide, Security made a number of express warranties with  
14 respect to material facts concerning the loans as set forth in paragraphs 12 and 13 above.

15 42. The express warranties contained in the Agreement and Seller's Guide were  
16 part of the basis of the bargain between Lehman and Security.

17 43. Security breached such express warranties for the loan numbered 4 on  
18 **Exhibit A**.

19 44. LBHI, through its agent, provided Security with timely written notice  
20 concerning Security's breaches of the express warranties.

21 45. Security refused or failed to take adequate steps to remedy or to  
22 compensate Lehman for Security's breaches of the express warranties.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, LBHI respectfully requests that this Court enter judgment in their  
25 favor and against Security, as follows:

- 26 (a) For all damages arising from or relating to Security's breaches of contract  
27 and express warranty, in an amount to be proved at trial;  
28

- 1 (b) In the alternative, for a decree of specific performance requiring Security  
2 to immediately repurchase all of the mortgage loans identified in Exhibit  
3 A pursuant to the Agreement and Seller's Guide;  
4 (c) For an Order of this Court declaring that:  
5 (i) Security is required to repurchase immediately from LBHI the  
6 mortgage loans identified in Exhibit A.  
7 (ii) Security is required to compensate LBHI immediately for all actual  
8 and consequential damages resulting from Security's breaches of  
9 the representations, warranties and/or covenants and Early  
10 Payment Default provisions of the Agreement and Seller's Guide.  
11 (d) For recoverable interest, including pre-judgment and post-judgment  
12 interest;  
13 (e) For attorneys' fees and costs in the event of default;  
14 (f) For the costs and expenses of suit incurred by LBHI herein, including  
15 attorneys' fees and costs as provided in the Seller's Guide and to the extent  
16 authorized by applicable law, including but not limited to A.R.S. § 12-  
17 341.01(A); and  
18 (g) For such other relief as this Court deems just and proper.

19 DATED this 11<sup>th</sup> day of June, 2009.

20 LEWIS AND ROCA LLP

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22  
23 By /s/ Emily S. Cates  
24 Emily S. Cates  
25 Attorneys for Plaintiff  
26 Lehman Brothers Holdings, Inc.  
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